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Supreme Court, U.S.
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MICHAEL RODAK, JR., CLERK

71-1519

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1971

No. .....

CEICEL D. BROWN and WILLIAM D. BROWN,
Petitioners,

vs.

THOMAS P. SCOTT,
Respondent.

RESPONSE TO MOTION FOR LEAVE TO FILE PETITION FOR WRIT OF CERTIORARI, AND FOR WRIT OF CERTIORARI TO THE EIGHTH CIRCUIT COURT OF APPEALS

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Respondent, Thomas P. Scott, respectfully moves that petitioners' motion for leave to file a petition for writ of certiorari under Section 1254 of Title 28, of the United States Code, to the United States Court of Appeals for the Eighth Circuit, be denied.

CARLOS B. HILL
P. O. Box 4074
Fayetteville, Arkansas 72701
Counsel for Respondent

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OPINIONS BELOW

The opinion of the United States District Court of Arkansas, Western District, is reported at 326 F.Supp. 332. The opinion of the United States Court of Appeals for the Eighth Circuit is reported at 454 F. 2d 693.

PETITIONERS PRESENT SIX QUESTIONS

FIRST: That the judgment below deprived the petitioners of their property without due process of law, and is in violation of the Fifth Amendment to the Constitution of the United States.

Petitioners' due process clause, which is question numbered one, was not raised in the United States District Court below, and is here raised for the first time, and is therefore waived. The due process clause under the Fifth Amendment of the Constitution of the United States, does not afford a party in every civil case a hearing on the merits; only an opportunity of a meaningful manner for a hearing appropriate to the nature of the case, which can vary depending upon the importance of the interest involved. It can be waived.

See:

Brody et al v. State of Connecticut et al., 91 Supreme Court 780.

Petitioners' questions numbered 2, 3, 4, 5 and 6, are questions of procedure under the Federal Rules of Civil Procedure.

The United States District Court for the Western District of Arkansas, considered separately all of the Rules cited, and found plaintiffs contentions to be without merit, and held that all pleadings should be construed as to do substantial justice. Rule 8(f) and Rule 56, Federal Rules of Civil Procedure.

Reported at 326 F. Supp. 332.

The United States Court of Appeals, Eighth Circuit, affirmed the dismissal of plaintiffs' Complaint.

Reported: 454 F. 2d 693.

STATEMENT

Petitioners, Ceicel D. Brown and William D. Brown, the plaintiffs below, as residuary legatees named in the will of David A. Burkett, a resident of Springdale, Arkansas, filed their complaint in the United States District Court of Arkansas, Western Division, asserting that the defendant, Thomas P. Scott, a resident of Arkansas, owed plaintiffs sums of money ($33,995.91) lent by plaintiffs' legator, David A. Burkett, to defendant Thomas P. Scott.

The defendant, Thomas P. Scott, denied that he was in any way indebted to the plaintiffs; and denied that it was in any way indebted to plaintiffs' legator, David A. Burkett, and prayed for dismissal of plaintiffs' complaint.

The United States District Court for the Western District of Arkansas, after hearing the evidence, dismissed the complaint. The Court held that the business transactions between plaintiffs' legator, David A. Burkett, and the defendant, Thomas P. Scott, constituted a gift inter vivos.

Reported at 326 F. Supp. 332.

The United States Court of Appeals for the Eighth Circuit affirmed the dismissal of plaintiffs' complaint.

Reported at 454 F. 2d 693;

See:

Whitfield v. Metropolitan Life Ins. Co., 262 F. Supp. 977-983;

E. A. Hobbs Administrator v. Preston, 354 SW2d 551, 234 Ark. 779.

CONCLUSION

In Conclusion, respondent submits that the issues herein involved have been conclusively resolved; that no issue remains unsolved, and that the motion filed herein for leave to file a petition for a Writ of Certiorari to the United States Court of Appeals, for the Eighth Circuit, should be denied.

Carlos B. Hill

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Counsel for Respondent

Certificate of Service

I, Carlos B. Hill, attorney of record for the respondent, a member of the Bar of the Supreme Court of the United States, hereby certify that I have served copies of the foregoing response to petitioners' motion for leave to file a petition for a Writ of Certiorari to the United States Court of Appeals, Eighth Circuit, by mailing copies to the Hon. Amy Burkett, Counsel of record for the petitioners, at her usual business address, Rt. 3, Biloxi, Mississippi 39532, postage paid.

Dated this 15th day of June, 1972.

Carlos B. Hill

Carlos B. Hill
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Counsel for Respondent